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October 4, 2016

Loretta E. Lynch, Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, DC 20530-0001

Gina McCarthy, Administrator
Environmental Protection Agency
Mailbox 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Judith A. Enck, Regional Administrator
Environmental Protection Agency Regional Office
Region II
290 Broadway
New York, NY 10007-1866

Robert Martin, Commissioner
Department of Environmental Protection
P.O. Box 402
401 E. State Street, East Wing
Trenton, NJ 08625-0402

Roberta M. Lang, Clerk
Wall Township
P.O. Box 1168
2700 Allaire Road
Wall, NJ 07719

Fred McDowell, Jr.
P.O. Box 119
Wall, New Jersey 07719

Re: Shark River Cleanup Coalition v
Wall Township and Fred McDowell, Jr.

Dear Sir/Madam:

Enclosed please find an original Notice of Intention to Commence Suit in this matter.

Thank you for your attention to this matter.

Very truly yours,

John P. Brennan, Jr.

JPB:jb

enclosure

cc. Shark River Cleanup Coalition w/encl.

**NOTICE OF INTENTION TO COMMENCE SUIT
UNDER THE CLEAN WATER ACT**

To: Loretta E. Lynch, Attorney General of the United States
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Sirs/Madam:

PLEASE TAKE NOTICE that Shark River Clean-up Coalition, Inc., a New Jersey Non-Profit Corporation, ("SRCC") with an address of PO Box 2241, Neptune City, NJ 07753, Phone and Fax 732-988-SRCC (7722), hereby provides notice pursuant to 33 U.S.C. § 1365 and

40 CFR § 135.1, that it intends to commence suit pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq. (1972), (“CWA”) against Wall Township and Fred McDowell, Jr., for violation of an effluent standard or limitation under the CWA. SRCC more specifically states:

Fred McDowell, Jr., P.O. Box 119, Wall, New Jersey 07719 (“McDowell”) is the owner of real property known as Block 930, Lot 1, on the Tax Map of the Township of Wall, New Jersey. The property consists of 459.97 acres in the RR6 zone and has a street address of 1401 Schoolhouse Road, Wall, NJ (the “Property”). McDowell operates a sand and gravel mining operation on the Property.

On November 1, 1991, the Township of Wall (“Wall Township”) recorded in the Monmouth County Clerk’s Office a certain Amended Declaration of Taking in the matter of Township of Wall v Fred D. McDowell, Superior Court of New Jersey, Law Division, Monmouth County, New Jersey, Docket No. L-56767-88, at Deed Book 5101, Page 0957. (“Declaration of Taking”). The Declaration of Taking memorialized a certain Consent Judgment between Wall Township and McDowell whereby Wall Township paid McDowell, \$200,000, for acquisition of a “permanent subterranean easement and temporary construction easement” and a “fee interest for construction of a sanitary sewer pump station” on the Property.

Subsequently, Wall Township constructed the sanitary sewer trunk line across the 25 foot wide subterranean sanitary sewer easement that runs from Campus Parkway in an easterly direction across the Property to the Garden State Parkway over 3.15 miles (16,341 feet) distant. The layout of the sewer lines runs largely parallel and in close proximity to the Shark River Brook, a tributary to the Shark River. The terrain it transverses is predominantly historic glacial sand deposits in New Jersey’s coastal plain. The sand has a fragile layer of scrub pine and oak

vegetation ecosystem.

The Declaration of Taking is silent regarding McDowell and Wall Township's respective obligations to maintain the easement. On April 5, 2016, SRCC submitted an New Jersey Open Public Records Request ("OPRA") to Wall Township requesting "all documents creating [the] sanitary sewer easement on [the] property, evidencing the installation of sanitary sewer [line] on the property and evidencing maintenance of the sanitary sewer [line] on the property for the period 2000 to present". In response, Wall Township shockingly advised that it has no responsive documents.

The installation of the sanitary sewer line disturbed the vegetative cover of the sand in which the subterranean pipe was installed. That disturbance and the obvious lack of maintenance of the easement has created a dangerous condition. Several sections of the sewer pipe have been undermined and are "flying" in the air without support. (Photos available upon request). This condition threatens the structural integrity of the active sanitary sewer pipe within a short reach of the Shark River Brook. Furthermore, in other locations, due to the installation of the pipe and failure to maintain the easement and the activities being conducted by the owner of the property, large areas of sand have "washed out" and infiltrated and discharged into the Shark River Brook. These conditions are violations of the Clean Water Act. It also has damaged and threatens to further damage the Shark River Watershed. Indeed, despite the April 2016 OPRA Request alerting Wall Township, no one has taken any steps to rectify the precarious situation.

The Shark River Watershed is the largest watershed in the South Coast Region of Monmouth County's Atlantic Coastal Watershed. It covers an area in excess of 23 square miles. It includes land within the municipalities of Tinton Falls, Colts Neck, Howell, Wall, Neptune,

river bottom of the bay.

Monmouth County has designated as a “Unique Area” (environmentally sensitive areas worthy of preserving from developmental pressures) the Estuarine Pond located on the Shark River, in the vicinity of Brighton Avenue and its border between Wall and Neptune Townships. More a marsh than a pond, this area was considered unique as a wildlife habitat, marsh, coastal flood plain and scenic area. The area supports a vegetative community consisting of Sweet Pepperbush, Hightide Bush, cattails, rushes, Common Reed and various spartine grasses. The area also supports a diverse bird community, including the endangered Bald Eagle and Black Skimmer as well as a nesting pair of Osprey, which are on the Threatened Species list. There is a large population of songbirds as well as migratory and fowl populations. The Shark River Watershed provides suitable habitat for dozens of threatened and endangered mammals, fish, amphibians, reptiles, and plant and avian species.

Another designated “Unique Area” is the Glendola Reservoir. It is located north of Belmar in Wall Township. The Glendola Reservoir is a source of potable drinking water operated by the New Jersey American Water Company (“NJAWC”). The water is pumped to a facility from the Shark River Brook and Jumping Brook and is stored for treatment and use. The reservoir is primarily bowl shaped, ringed with forested wetlands, forested uplands and residential developments. It holds approximately one billion gallons of water. NJAWC also pumps water from the Shark River Brook directly to its Jumping Brook Treatment Plant located on Old Corlies Avenue in Neptune Township. This Plant provides part of the potable water for approximately 245,000 customers in the municipalities of Avon, Bradley Beach, Belmar, Lake Como, Neptune City, Neptune Township, Bay Head and Tinton Falls.

As surface water, the Shark River and its tributaries are protected by a regime of environmental statutes, regulations and ordinances. The New Jersey Department of Environmental Protection ("DEP") administers the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, for the protection of surface water quality of the waters of the State. The DEP develops and administers the SWQS pursuant to the Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The SWQS are further developed and administered in conformance with the requirements of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., commonly known as the Clean Water Act (CWA), and the Federal regulatory program established by the United States Environmental Protection Agency (USEPA) at 40 CFR § 131. The SWQS include general requirements, use classifications, antidegradation categories, and water quality criteria applicable to the surface waters of the State. The SWQS are established to address the DEP's responsibility to conduct a continuous planning process pursuant to Section 303 of the CWA, 33 U.S.C. § 1313, and the WQPA, N.J.S.A. 58:11A-1 et seq.

The SWQS are intended to aid the DEP in its implementation of the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules (N.J.A.C. 7:14A); Freshwater Wetlands Protection Act (N.J.A.C. 7:7A); Coastal Zone Management rules (N.J.A.C. 7:7E); Flood Hazard Area Control rules (N.J.A.C. 7:13); Stormwater Management rules (N.J.A.C. 7:8); and Water Quality Management Planning rules (N.J.A.C. 7:15).

The SWQS establish three categories of antidegradation protection: Outstanding National Resource Waters (ONRW); Category One waters; and Category Two waters. "Category One waters," are defined in the SWQS at N.J.A.C. 7:9B-1.4 as "those waters designated . . . for

protection from measurable changes in water quality characteristics because of their . . . exceptional ecological significance [or their] exceptional water supply significance . . .”

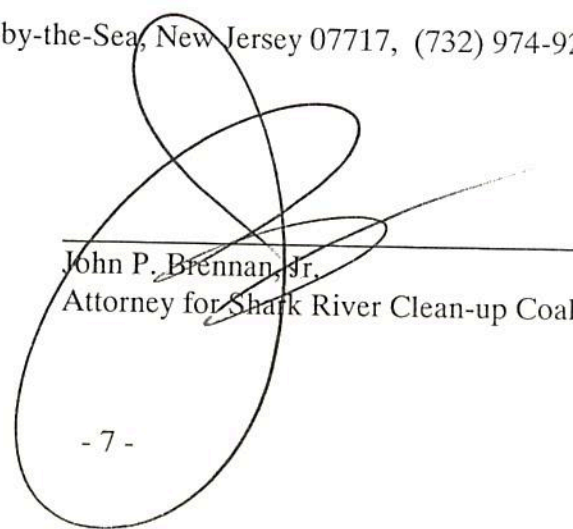
On June 6, 2005, the NJDEP designated the Shark River Brook from its source to Remsen Mill Road to a Category One status based upon its “exceptional water supply significance” to the Glendola Reservoir. The Category One waters of Shark River Brook run across the Property and in close proximity to the Sanitary sewer pipe.

The unmitigated historic and continuing release of washed out sand from the sanitary sewer easement into the Shark River Brook and the threatened release of sanitary sewer effluent from the sanitary sewer pipe all constitute un-permitted discharges of pollutants into the Shark River, a navigable waterway protected from such discharges under the Clean Water Act.

The Shark River Clean-up Coalition is a watershed watchdog organization whose mission since its 2001 incorporation is “to significantly enhance the water quality of the Shark River Estuary and its fresh water tributaries, to improve and protect habitats important to the conservation and abundance of wildlife, to protect the recreational and commercial uses from degradation and pollution, thereby ensuring the ecological and economic stability of this important watershed.”

Notices regarding this matter should be made to SRCC’s counsel, John P. Brennan, Jr., Attorney at Law, 43 Main Street, Avon-by-the-Sea, New Jersey 07717, (732) 974-9234.

Dated: October 4, 2016



John P. Brennan, Jr.
Attorney for Shark River Clean-up Coalition, Inc.